

---

United States<sup>4</sup>  
**Circuit Court of Appeals**  
For the Ninth Circuit.

---

CELIA DIAMOND and WILLIAM DIAMOND and  
BRIDGET McGRAIL and JOHN McGRAIL,  
Appellants,

vs.

LAWRENCE F. CONNOLLY, administrator of the  
estate of JOHN CORBETT, deceased, and LAW-  
RENCE F. CONNOLLY, individually, JOHN J.  
CONNOLLY and JOHN E. McBURNEY,  
Appellees.

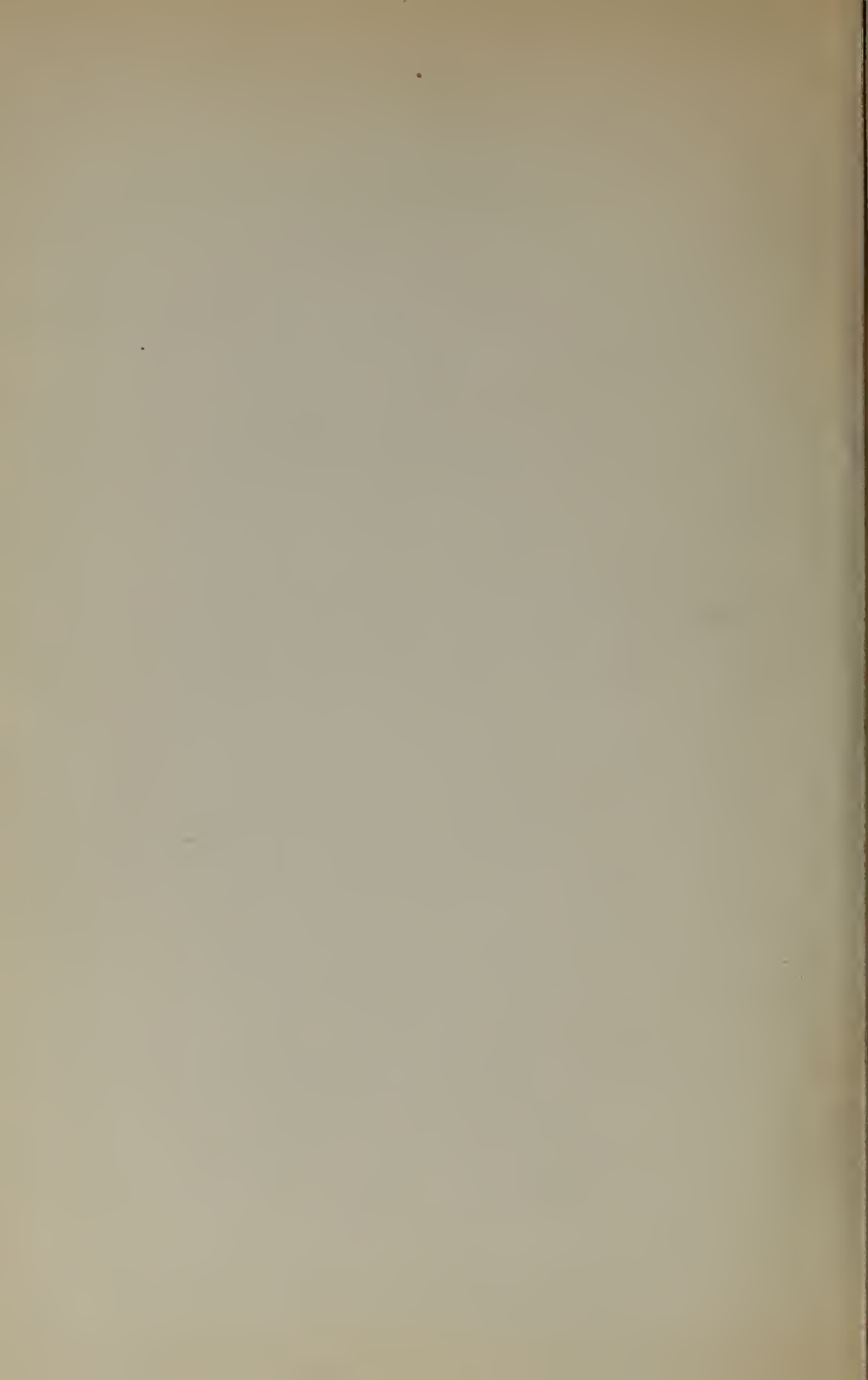
---

**Transcript of the Record.**

---

*Upon Appeal from the District Court of the United  
States, District of Idaho, Northern Division.*

---



No. ....

**United States**  
**Circuit Court of Appeals**  
**For the Ninth Circuit.**

---

CELIA DIAMOND and WILLIAM DIAMOND and  
BRIDGET McGRAIL and JOHN McGRAIL,  
Appellants,

vs.

LAWRENCE F. CONNOLLY, administrator of the  
estate of JOHN CORBETT, deceased, and LAW-  
RENCE F. CONNOLLY, individually, JOHN J.  
CONNOLLY and JOHN E. McBURNEY,  
Appellees.

---

**Transcript of the Record**

---

*Upon Appeal from the District Court of the United  
States, District of Idaho, Northern Division.*

# INDEX

---

	Page
Affidavit of service.....	34
Alias Subpoena Ad Respondendum.....	32
Assignment of Errors.....	76
Bill of Complaint.....	7
Bond on Appeal.....	78
Citation .....	83
Clerk's Certificate .....	85
Decision on Motion to Dismiss.....	57
Decree .....	75
Motion to Dismiss.....	43
Motion to Dismiss of Defendant John E. McBirney....	49
Motion to Qash and Dismiss.....	37
Notice of Motion to Quash and Dismiss.....	35
Objection to Jurisdiction of Court and Motion to Dis- miss for Want of Jurisdiction.....	41
Order Denying Motion to Amend.....	74
Order directing service of Subpoena.....	32
Order overruling Motion to Dismiss and Quash.....	56
Petition for Appeal.....	75
Plaintiff's Motion to Amend Complaint.....	73
Plaintiff's Praecipe for Transcript.....	80
Return to record.....	84



NAMES AND ADDRESSES OF ATTORNEYS  
OF RECORD.

---

CALEB JONES, Esq.,  
620 Paulsen Building,  
Spokane, Washington,  
Attorney for Appellants.

C. W. BEALE, Esq.,  
Wallace, Idaho,  
Attorney for Lawrence F. Connolly, as administrator  
and individually, and John J. Connolly,

EZRA R. WHITLA, Esq.,  
Coeur d'Alene, Idaho,  
Attorney for John E. McBurney,  
Appellees.

*In the District Court of the United States, District of  
Idaho, Northern Division.*

CELIA DIAMOND and WILLIAM DIAMOND and  
BRIDGET McGRAIL and JOHN McGRAIL,  
Plaintiffs,

vs.

LAWRENCE F. CONNOLLY, Administrator of the  
estate of JOHN CORBETT, deceased, and LAW-  
RENCE F. CONNOLLY, individually, JOHN J.  
CONNOLLY and JOHN E. McBURNEY,  
Defendants.

No. 681.

### BILL OF COMPLAINT.

To the Judges of the District Court of the United  
States, for the District of Idaho, Northern Divi-  
sion :

Plaintiffs Celia Diamond and William Diamond  
of the city of Homestead, and residents and citizens  
of the State of Pennsylvania, and Bridget McGrail  
and John McGrail, of the City of Pittsburgh, and resi-  
dents and citizens of the State of Pennsylvania,  
brings this, their bill, against Lawrence F. Connolly,  
as administrator of the estate of John Corbett, de-  
ceased, in Kootenai County, Idaho, and Lawrence F.  
Connolly, individually, John J. Connolly and John  
E. McBurney, all residents and citizens of the State  
of Idaho.

THEREUPON PLAINTIFFS COMPLAIN AND  
SAY :

## I.

That the plaintiffs Celia Diamond and William Diamond, are now and have been since the year 1889, husband and wife; and the plaintiffs Bridget McGrail and John McGrail, are now and have been since the year 1889, husband and wife; and that all of said plaintiffs, have been for more than fifteen years last past, residents and citizens of the State of Pennsylvania.

## II.

That the defendants, Lawrence F. Connolly, John J. Connolly and John E. McBurney, are now and have been for more than ten years last past, residents and citizens of the State of Idaho.

## III.

That on the thirtieth day of January, 1907, John Corbett died in Kootenai County, State of Idaho, intestate, leaving an estate therein.

## IV.

That on the ninth day of February, 1907, the defendant, Lawrence F. Connolly, filed his petition in the Probate Court of Kootenai County, Idaho, asking for letter of administration on the estate of the said John Corbett, deceased.

## V.

That on the twentieth day of February, 1907, the Judge of said Probate Court, duly appointed the said defendant, Lawrence F. Connolly, administrator of the estate of the said John Corbett, deceased, and at the same time exacted a bond of the said Lawrence F.



Connolly, with sureties, in the sum of \$35,000.00 for the faithful performance of his duties as the administrator of the estate of the said deceased.

VI.

That, thereafter, and before receiving letters of Administration on the twentieth day of February, 1907, the said Lawrence F. Connolly, executed a bond to the State of Idaho, signed by himself as principal, and by John J. Connolly and John E. McBurney, as sureties, conditioned that he would faithfully execute the duties of the trust according to law.

VII.

That, thereafter and on the said twentieth day of February, 1907, said bond was duly approved by the Judge of said Probate Court and filed therein, whereupon the said Lawrence F. Connolly, duly qualified, and formal letters of administration on said estate were issued to him, and he immediately assumed the duties of his trust, as the administrator of the estate of said John Corbett, deceased.

VIII.

That on the fourth day of March, 1907, the said Lawrence F. Connolly, acting as administrator of the estate of the said John Corbett, deceased, caused to be filed in the said Probate Court, an Inventory and Appraisement of said estate, setting forth therein the following list of property and its appraised value, to-wit:

Promissory Note, Empire Mill Co.....	\$12,000.00
Open deposit Exchange National Bank, Spokane, Wash.....	900.00

Time deposit Exchange National Bank, Spokane, Wash. ....	702.70
Open account First Bank, Harrison.....	74.31
Sixty shares Empire Mill Co., Harrison, Idaho .....	6,000.00
Credit in Empire Mill Co.'s books.....	1,679.97
	<hr/>
	\$21,356.98

## IX.

That plaintiffs have been informed and believe, and therefore aver, that the said property mentioned in said inventory and appraisalment, constituted only a portion of the estate of the said John Corbett, deceased, and that the appraisalment thereof was for much less and grossly disproportionate to its real value.

## X.

This is a suit of a civil nature, and the matters in dispute between the plaintiffs and the defendants, exceeds the sum or value of three thousand dollars, exclusive of interest and costs, and as the plaintiffs have been informed and believe, and therefore aver, of the value of more than seventy-five thousand dollars.

## XI.

That, one Pat Corbett, now deceased, was the grandfather of said Bridget McGrail and Celia Diamond, said plaintiffs, and the father of said John Corbett, deceased.

## XII.

That said Pat Corbett was during his life time, twice married; first, to one Julia Price, from which

marital union but one child was born, and named Bridget Corbett.

XIII.

That after the death of said Julia Price, the said Pat Corbett, married one Bridget Connolly, from which marital union was born but two children, namely, Pat Corbett, who died unmarried and without issue in 1893, and the said John Corbett, deceased.

XIV.

That said Bridget Corbett married one Austin Madden, from which marital union was born but nine children.

XV.

That said plaintiffs, Bridget McGrail and Celia Diamond are the daughters of said Bridget Madden, nee Corbett, and Austin Madden, and their only children that are citizens or residents of the United States of America.

XVI.

That the births and marriages mentioned in the five preceding paragraphs, all took place in the County Galway, Ireland, all parties being at the time subjects of the United Kingdoms of Great Britain and Ireland.

XVII.

That the plaintiffs are the neices of the said John Corbett deceased, and were at the time of his death and are now his true and lawful heirs, and as such were and are now, entitled to succeed to the entire

estate left by the said John Corbett, deceased, at the time of his death.

### XVIII.

That at the time that the said defendant, Lawrence F. Connolly, presented to the said Probate Court of Kootenai County, State of Idaho, his petition for letters of administration on the estate of said John Corbett, deceased, he represented to the said Court, that William Connolly, John J. Connolly, and himself were brothers, and that Ellen Udell was their sister, and that they were all cousins of said John Corbett, deceased, and his heirs at law, at the time knowing that they were not the next of kin or his heirs at law. That said representations were made with intent to deceive said Probate Court, and to defraud these plaintiffs.

### XIX.

That on the second day of August, 1909, said Lawrence F. Connolly, as the administrator of the estate of the said John Corbett, deceased, filed a petition in the said Probate Court of Kootenai County, Idaho, asking for a decree of distribution of said estate, therein falsely representing to said Court, that he, his brothers William Connolly and John J. Connolly, and his said sister, Ellen Udell, were the heirs at law of said John Corbett, deceased; that said representations were made by the said Lawrence F. Connolly, with the knowledge and assent of his brother and sister, and with the intent to deceive the said Probate Court, and to defraud these plaintiffs as the heirs at

law of said John Corbett, deceased, by taking unto themselves the said estate, that in law, equity and right belonged to these plaintiffs.

XX.

That, on the twenty-third day of August, 1909, the said Probate Court of Kootenai County, Idaho, in compliance with the petition mentioned in the last preceding paragraph hereof, and by reason of said false and fraudulent representations in said petition made, made a decree of distribution to the said Lawrence F. Connolly, William Connolly, John J. Connolly and Ellen Udell, in equal portions, what was represented to be, the entire estate of the said John Corbett, deceased, consisting as stated in said decree of distribution of \$19,915.38, cash, lawful mony of the United States of America.

XXI.

That, thereafter, on the twenty-eighth day of June, 1912, the said Lawrence F. Connolly, as the administrator of the estate of the said John Corbett, deceased, distributed and delivered said estate to himself, and John J. Connolly, on the twenty-eighth day of June, 1912, and to William Connolly and Ellen Udell, on the third day of July, 1912, in the proportions in said decree of distribution mentioned, with the full knowledge on the part of each and every of them, that none of them were the next of kin living and residing in the United States of America, or the heirs at law of the said John Corbett, deceased, or rightfully entitled to a share of his said estate.



## XXII.

That the reason that said William Connolly and Ellen Udell are not made parties to this action, is because they are not within the jurisdiction of this court, being citizens and residents of the State of Nebraska.

## XXIII.

That plaintiffs, Celia Diamond and Bridget McGrail were both born near Clifden, Galway County, Ireland, and their both parents were up to the time of their respective deaths, residents and citizens of said County of Galway, and subjects of the United Kingdoms of Great Britain and Ireland. That their mother, Bridget Madden, was a half sister of said John Corbett, deceased, who was also born near Clifden, County Galway, Ireland. That the parents of the defendant, Lawrence F. Connolly, William Connolly, John J. Connolly and Ellen Udel, lived near Clifden, County Galway, Ireland, and said defendants were born there. That during the early lives of the plaintiffs, defendants and the said John Corbett, deceased, their respective families were well acquainted with each other. They frequently met in a social way, traded at the same market, knew where each other lived, and recognized each other as friends and relatives.

## XXIV.

That, in 1887, the plaintiff, Bridget McGrail, then Bridget Madden, moved to Pittsburg, Pa., and in 1889, married John McGrail, a native of Ireland,

who in 1892, became a citizen of the United States, and since said last mentioned date has been a citizen of and resident of Pittsburgh, Pennsylvania.

## XXV.

Some three years after the coming of the said Bridget McGrail to the United States, the plaintiff, Celia Diamond, then Celia Madden, also came to Pittsburgh, Pennsylvania, and in 1899, married said William Diamond, a native of Ireland, who in 1897, became a citizen of the United States, and since said time has been a citizen and resident of Homestead, State of Pennsylvania.

## XXVI.

That the plaintiffs have made frequent trips to their old home in Ireland, near Clifden, Galway County, since their marriage and becoming citizens of the United States, and have renewed their acquaintance with their old friends, associates and relatives in Ireland, among whom were the relatives of the defendants, Connollys and Udell, and other kin there resident, that were mutually acquainted with the plaintiffs and defendants, Connollys. That on such visits the absent members of said families were usually discussed, and the fact that the plaintiffs lived in the State of Pennsylvania, became well known among relatives, friends and acquaintances in Clifden, County Galway, Ireland, and the further fact that the said defendants, Connollys and John Corbett, deceased, had come to the United States of America, was made known to these plaintiffs.

## XXVII.

That, on or about the month of May, 1910, after the said defendants, Lawrence F. Connolly and John J. Connolly, and their brother, William Connolly, and sister, Ellen Udell, had concealed or not made known the death of the said John Corbett, deceased, for a period of three years and three months, from his relatives and next of kin in Ireland, and from his other relatives and next of kin in the United States, and in and about one year after they had procured a decree of distribution from the said Probate Court of his said estate to themselves; the death of the said John Corbett, deceased, was first brought to the knowledge and attention of the plaintiffs, by some neighbors, who brought to them and read an announcement in a newspaper of the death of the said John Corbett, in Idaho. That the plaintiffs immediately procured the assistance of a friend to write to their mother of the death of their uncle, the said John Corbett, each being illiterate and unable to write in person; believing at the time, that their mother was the sole heir of said John Corbett; and have at all times acted on such hypothesis since the death of the said John Corbett was made known to them, until they were informed by Caleb Jones that they were the heirs of said John Corbett, deceased, in their own right, and independent of that of their mother, as is hereinafter alleged.

## XXVIII.

That, plaintiffs soon after the death of the said John Corbett was made known to them, called upon



J. W. Davidson, an attorney and counsellor at law, at Pittsburgh, Pennsylvania, and after stating the facts of their relationship, and the fact that their mother was then living in Ireland, asked him if they had any right or interest in the estate of the said John Corbett, deceased, and he informed them that they had not, and could not have any direct interest in said estate, until after their mother's death, and then only through her as her heirs, as they were not the heirs of John Corbett, deceased; and that their mother, Bridget Madden, was the sole heir of John Corbett, deceased, all of which these plaintiffs believed and relied upon.

### XXIX.

That, some few months after the death of the said John Corbett, deceased, became known to the plaintiffs, and their mother and other relatives in Ireland, the said Lawrence F. Connolly, while acting in the capacity of administrator of the estate of the said John Corbett, deceased, with one Father Purcell, a Catholic priest, of the county of Kootenai, Idaho, made a trip to Clifden, County Galway, Ireland, and as plaintiffs have been informed and believe, and therefore aver, for the express purpose of procuring an assignment of the right, title and interest of the said Bridget Madden in and to the estate of the said John Corbett, deceased; that plaintiffs have been further informed and believe, and therefore aver, that by false and fraudulent representations, and undue influence of the said Lawrence F. Connolly and said Father Purcell, as to the value of the said

estate of the said John Corbett, deceased, the said Bridget Madden, then of the age of about eighty-five years, blind and decrepit, and unable to either read or write, and with a failing understanding of the matters of this world, and a most zealous votary of the Catholic religion, was induced to and did sign, by making her mark, on or about the first day of April, 1911, an instrument conveying her interest in said estate of the said John Corbett, deceased, to the said Lawrence F. Connolly. That said representations were known by the said Lawrence F. Connolly and the said Father Purcell to be false, and were made in an attempt, and with an intent to cheat and defraud the said Bridget Madden, and these plaintiffs, with whose whereabouts in the United States, they were then cognizant of. That said instrument so procured, was, and is insufficient for any purpose, and it failed to convey any right, claim or interest in said estate.

### XXX.

That, thereafter on the fourteenth day of March, 1912, proceedings on behalf of the said Bridget Madden were instituted in the United States Circuit Court, of Idaho, by her counsel, Messrs. Elder & Elder, attorneys and counselors at law, at Coeur d'Alene, Idaho, with the object of securing to her the estate of the said John Corbett, deceased, which proceedings were thereafter dismissed without prejudice. That on the twenty-eighth day of May, 1912, proceedings were instituted in the Probate Court of Kootenai County, Idaho, on the behalf of the said Bridget Madden, by her said attorneys, Messrs. El-

der & Elder, with the ultimate object of establishing her right to succeed to the estate of the said John Corbett, deceased. That in connection with said proceedings and in the course thereof, the Supreme Court of Idaho, on the twenty-third day of May, 1912, determined, that, Bridget Madden never had, and did not have any right, title or interest, in the estate of the said John Corbett, deceased; said decision being reported under the title of *Connolly vs. Reed*, 22 Idaho 29, 125 Pac. 213. That soon after said determination by the Supreme Court of Idaho, proceedings were instituted in the District Court of the State of Idaho, in and for the County of Kootenai, by the Attorney General of the State of Idaho, and the said Elder & Elder, then looking after the interest of the said Bridget Madden, for the purpose and object of having the estate of the said John Corbett, deceased, escheated to the State of Idaho; that said last mentioned proceeding was finally determined by the Supreme Court of Idaho, on the twenty-fifth day of October, 1913, adversely to the contentions of the said Attorney General and Messrs. Elder & Elder, and adversely to the interest of the said Bridget Madden, the mother of these plaintiffs, Celia Diamond and Bridget McGrail. Said decision being reported under the title of *Connolly vs. Probate Court*, 25 Idaho 35, 136 Pac. 205.

### XXXI.

That, on or about the ninth day of December, 1912, plaintiffs consulted one Arthur Schmidt, an attorney and counselor at law, at Pittsburgh, Pennsylvania, as

to their right in the estate of said John Corbett, deceased, and in behalf of the plaintiffs, the said Schmidt took the matter up with Messrs. Elder & Elder, attorneys at law, at Coeur d'Alene, Idaho, by letter, they being at the time familiar with the facts of the plaintiffs' relationship to the said John Corbett, deceased, and their residence in the United States, and all other facts pertinent to the inquiry, and was by them informed through the said Arthur Schmidt, that they had no right personally and were not the heirs of the said John Corbett, deceased; and the said Arthur Schmidt personally concurred in the statement, that their mother was the only heir at law of the said John Corbett, deceased, and that anything that they might get from the estate of the said John Corbett, deceased, would come through their mother as her heirs. That if their mother died they would succeed to her interest, right or estate in the property of the said John Corbett, deceased, along with their brothers. All of which these plaintiffs fully believed and relied upon.

### XXXII.

That, on or about the twenty-fifth day of October, 1911, plaintiff, Bridget McGrail, received a letter from Henry G. Connolly, of the firm of R. J. Connolly & Son, Solicitors, located at Clifden, County Galway, Ireland, informing her that said Bridget Madden, her mother, was the said John Corbett's "sole next of kin and heiress at law him surviving," which plaintiffs fully believed and relied upon.

XXXIII.

That, neither of these plaintiffs have acquired any of the elements of a school education, and cannot read or write. That they placed complete reliance and implicit confidence, on the representations made to them by the said J. W. Davidson, Arthur Schmidt, Robert Elder of the firm of Elder & Elder, Henry G. Connolly, all men whom they believed to be learned in the law, and even more conversant from investigations conducted with the real facts than they themselves.

XXXIV.

That, in discussing their rights and interest in the estate of the said John Corbett, deceased, after they had learned of his death, with friends and acquaintances who were intelligent and who possessed a school education, and in whose ability and integrity they had respect and confidence, they were repeatedly informed and told that they could have no interest in the Corbett estate while their mother lived, as she alone was the next of kin and entitled to the estate; and plaintiffs believed such statements in connection with and confirmatory of the statements of said attorneys and counselors at law.

XXXV.

That, pending the litigation and efforts made in behalf of their mother, Bridget Madden, to secure the estate of said John Corbett, deceased, these plaintiffs took great interest therein and did all in their power to further the interest of their mother.



## XXXVI

That, on the twenty-sixth day of August, 1914, the said Bridget Madden died, at her old home near Clifden, County Galway, Ireland. That a very short time previous to her death these plaintiffs were informed that the courts in Idaho had denied her any right or interest in the estate of the said John Corbett, deceased.

## XXXVII.

That, within a few months after the death of the said Bridget Madden, plaintiffs again took up the matter of their interest in the estate of John Corbett, deceased, with the said J. W. Davidson, and were again informed that they had no right in or to the estate of the said John Corbett, deceased, from the fact and for the reason that the Supreme Court of the State of Idaho had determined on two occasions that their mother, Bridget Madden, had no right, and since she had no right they could have no right.

## XXXVIII.

That, along about the first of the year, 1916, plaintiffs went to Bradley McK. Burns, an attorney and counselor at law, at Pittsburgh, Pennsylvania, and imparted to him all the facts in the case then understood by plaintiffs, and he undertook to investigate the matter in their behalf, which he did, and in so doing, wrote a number of letters, among which was one to Mr. C. Redman Moon, of St. Anthony, Idaho, an attorney and counselor at law, about the said Corbett estate, which letter was referred by the said Mr.

Moon to Mr. Caleb Jones, attorney and counselor at law, at Spokane, Washington. That Mr. Bradley McK. Burns informed them that he feared that their cause was hopeless. That after a number of letters had passed between the said Bradley McK. Burns and the said Caleb Jones a rumor came to plaintiffs, which they were unable to trace or verify, to the effect, that the said Connollys, defendants herein, had destroyed the last will and testament of the said John Corbett, deceased, which by its terms made the said Bridget Madden, his sole heir. This information was taken to the said Bradley McK. Burns, and he then informed plaintiffs that it would be necessary for him to make a trip to Idaho, and to Nebraska, in order to get exact information as to the present status of the Corbett estate, and other facts in connection with the matter that might be beneficial to the said plaintiffs as the heirs of Bridget Madden, deceased. That if he did not do it himself, he advised that some one qualified should do so at once.

### XXXIX.

That on or about the tenth day of August, 1916, plaintiffs left their homes in the State of Pennsylvania, and came to Spokane, Washington, and procured the services of Mr. Caleb Jones, an attorney and counselor at law, to go with them to Coeur d'Alene, Idaho, having traveled from their homes a distance of two thousand eight hundred miles, to make an investigation of the court records at Coeur d'Alene, Idaho, and other matters pertaining to and concerning the

estate of the said John Corbett, deceased. That, plaintiffs with Mr. Jones made an investigation of the court records as aforesaid, on or about the fifteenth day of August, 1916, and these plaintiffs were then for the first time informed that the estate of the said John Corbett, deceased, was no longer under the control of the court, and that it had been distributed to the said Lawrence F. Connolly, John J. Connolly, William Connolly and Ellen Udell.

#### XL.

That, after the investigation of the said court records at Coeur d'Alene, Idaho, and on the same day plaintiffs returned to Spokane, Washington, and employed Mr. Jones to investigate and advise them what if any interest they had in the estate of the said John Corbett, deceased, as the heirs of said Bridget Madden, deceased. He undertook an investigation of the matter, and within the course of a week informed them, that in his judgment, there was no chance to recover any of the assets of the Corbett estate, as representatives of their mother, for she had no right in the beginning at the time of the death of John Corbett, and failed to initiate one within the time prescribed by the statutes of Idaho; but further advised them, that in his judgment, without making further investigation of the law and the facts, and without being final, that they were then, and had been since the death of the said John Corbett, his next of kin in the United States, and his heirs, and as such entitled to inherit his estate. That this was the first time, that either of the plaintiffs



were ever informed, or had brought to their knowledge that they were the heirs of said John Corbett, deceased, or that they had any right, title or interest, in and to the estate of the said John Corbett, deceased, by reason of their being the next of kin, in the United States, and residents and citizens thereof at the date of the death of the said John Corbett; and also the first time that they had brought to their knowledge the facts of the alleged fraud of the defendants, Connollys, and their sister, Ellen Udell, on the said Probate Court, and against these plaintiffs.

#### XLI.

That, plaintiffs then formally employed the said Caleb Jones, as their attorney and counselor at law, with full power to make settlement of the matter with the said Connollys and their sister, Ellen Udell, in or outside of the courts, and with or without any legal proceeding, and with the understanding that he make such further investigation of the law and the facts, and to employ or associate with him such additional counsel as he thought proper; and, if after such further investigation he felt confirmed in his judgment of the rights of plaintiffs as the heirs of said John Corbett, deceased, he was to proceed as their attorney and counselor and in their behalf commence such legal proceedings as he deemed necessary, and in such court or courts as to him seemed proper.

#### XLII.

That, the said Caleb Jones, in pursuance of said agreement, did on the twenty-first day of August,

1916, write to the defendant, Lawrence F. Connolly, a letter, stating therein the claims of the plaintiffs, and inviting a settlement or adjustment thereof without the interposition of the courts, to which no reply was made.

#### XLIII.

That, thereafter, on the eleventh day of September, 1916, these plaintiffs, by their attorney, Caleb Jones, submitted the question of their rights as the heirs of the said John Corbett, deceased, to Messrs. Graves, Kizer & Graves, a very reputable firm of lawyers, in the city of Spokane, State of Washington, and was by them finally advised on the second day of October, 1916, that Bridget Madden possessed a right, but since her right had been foreclosed both by reason of failure to assert it within the statutory time and bar of the judgment against her, it foreclosed all those in privity with her, and that the plaintiffs are in privity with her.

#### XLIV.

That, thereafter on or about the tenth day of October, 1916, the same question submitted to the said Messrs. Graves, Kizer & Graves, was submitted to Messrs. Voorhees & Canfield, another reputable and distinguished firm of attorneys and counselors, at Spokane, Washington, who on the seventh day of March, 1917, after careful consideration, advised said Caleb Jones, that they had gone very thoroughly into the various questions involved and considered plaintiff's claims in the premises meritorious.

XLV.

Therefore, plaintiffs allege that the foregoing narration of the facts and circumstances effecting plaintiff's lack of action in the past in relation to the assertion of their own direct claims to the estate of the said John Corbett, deceased, constituted impediments to the earlier prosecution thereof.

XLVI.

That, on the twenty-fourth day of March, 1917, plaintiffs, by their attorney, Caleb Jones, made written demand on the said Lawrence F. Connolly, as the administrator of the estate of said John Corbett, deceased, and upon his individually, for the property heretofore distributed to him, belonging to the estate of said John Corbett, deceased, and that came to his possession as the administrator of said estate, together with its issues and profits, and demanded an accounting of all of said property; and also made a like and separate demand upon John J. Connolly, for the property distributed to him from the estate of the said John Corbett, deceased, and for an accounting thereof, and of its rents, issues and profits; to which demands no attention has been paid, or response made to plaintiffs.

XLVII.

All of which doings and pretenses of the said defendants are contrary to equity and good conscience, and tend to the manifest wrong, injury and oppression of plaintiffs in the premises, and by the strict rules of the common law, can only have relief in a

court of equity, where matters of this nature are properly cognizable and relievable.

And to the end that the said Lawrence F. Connolly, as the administrator of the estate of John Corbett, deceased, and for himself personally, and the defendant, John J. Connolly, and the defendant, John E. McBurney, may full, true and direct and certain answers make according to their knowledge, information and belief, to all and singular the matters and charges aforesaid, but not on oath, their answers on oath being expressly waived, plaintiffs pray as follows:

1. That they be adjudged and decreed to be the true and lawful heirs of the said John Corbett, deceased, and as such entitled to succeed to his estate in equal portions.

2. That each of the said defendants, except the defendant, John E. McBurney, be adjudged and decreed to be the trustees of plaintiffs, of and to the extent of all the property by each received, from the estate of the said John Corbett, deceased, whether by order, judgment or decree of the Probate Court of Kootenai County, Idaho, or otherwise.

3. That the said defendant, Lawrence F. Connolly, as the administrator of the estate of said John Corbett, deceased, and individually, and that the said John J. Connolly, and each of them, be required to discover and set forth a full, true, and particular account of all and singular the property, estate and effects of the said John Corbett, deceased, and each and every part thereof, which has been possessed by, or

come to, the hands of the said defendants, or either of them, or the hands of any other person or persons by their, or either of their, order, or for their, or either of their, use, together with the issues and profits thereof; with the particular nature, qualities, quantities and true and utmost value thereof, respectively, and how the same and every part thereof has been applied and disposed of, and whether any, and what part thereof, now remains unapplied and undisposed of, together with such other matters as may contribute to show the disposition, amount, extent, value and condition of all of the property and estate of the said John Corbett, deceased.

4. That the said defendant, Lawrence F. Connolly, as the administrator of the estate of said John Corbett, deceased, be required to discover and set forth a full, true and particular account of all and singular the property, estate and effects, of the said John Corbett, deceased, and of each and every part thereof, which has been possessed by, or come to, the hands of said defendant, or to the hands of any other person or persons by his order, or for his use, together with the issues and profits thereof; with the particular nature, qualities, quantities and true and utmost value thereof, and every part thereof, respectively, and how the same and every part thereof has been applied and disposed of; and whether any and what part thereof now remains unapplied and undisposed of; and that the said defendant may set forth in addition, an account of the debts due from the said John



Corbett, deceased, and the expenses of the administration of his estate.

5. That a judgment and decree be entered against the said John J. Connolly and John E. McBurney, sureties on the said bond of the said Lawrence F. Connolly, as administrator of the estate of the said John Corbett, deceased, in favor of the plaintiffs, up to the amount of their joint and several obligations, mentioned in said bond, and not exceeding the ascertained value of the property, estate and effects of the said John Corbett, deceased, that plaintiffs may be decreed to be entitled to.

6. That, when the several accounts herein mentioned have been rendered, and this Court shall have ascertained the character, kind and amount of the property and estate of the said John Corbett, deceased, and the clear residue thereof to which plaintiffs, as the heirs of the said John Corbett, deceased, were and are now entitled to receive, may be turned over and paid, one part each, of such clear residue; and that separate and several judgments or decrees be rendered against the defendants, in favor of the plaintiffs, for the property, estate and effects distributed to each respectively; together with a judgment or decree for the entire net residue of the estate of said John Corbett, deceased, after deducting all expenses of administration, and just debts due and paid from the estate of said John Corbett, deceased, against the said Lawrence F. Connolly, and directing the turning over and payment to these plaintiffs of such residue in equal parts.

7. That plaintiffs may be further and otherwise relieved in the premises, according to equity and good conscience.

8. May it please Your Honor to grant to plaintiffs the Writ of Subpoena issuing out of and under the seal of this Honorable Court, directed to the said Lawrence F. Connolly, as the administrator of the estate of John Corbett, deceased, and personally, and directed to John J. Connolly and John F. McBurney, commanding each of them by a certain day and under certain penalty to be therein inserted, to be and appear before this Honorable Court and then and there to answer the premises, and to further stand to and abide such order and decree therein as shall be agreeable to equity and good conscience; and should said Ellen Udell or William Connolly come within the jurisdiction of this Court, like process be issued to make them parties to this action; and plaintiffs will ever pray.

CALEB JONES,

Solicitor of Plaintiffs and of Counsel. P. O. address,  
620 Paulsen Building, Spokane, Washington.

C. REDMAN MOON,

Associate Solicitor of Plaintiffs. P. O. address, St.  
Anthony, Idaho.

Endorsed, filed March 29, 1917.

W. D. McReynolds, Clerk.

By Pearl E. Zanger, Deputy.

(Title of Court and Cause.)

No. 681.

## ORDER DIRECTING SERVICE OF SUBPOENA.

On application of Mr. Caleb Jones, solicitor for the plaintiffs in the above entitled cause, it is specially ordered and directed that service of the Writ of Subpoena on the defendants in the above entitled cause be made by T. L. Quarles, the sheriff of Kootenai County, Idaho.

Dated this thirtieth day of March, 1917.

FRANK S. DIETRICH, Judge.

Filed March 30, 1917.

W. D. McReynolds, Clerk.

(Title of Court and Cause.)

No. 681.

## IN EQUITY—(ALIAS) SUBPOENA AD RESPONDENDUM.

The President of the United States of America, to Lawrence F. Connolly, administrator of the estate of John Corbett, deceased, and Lawrence F. Connolly, individually, John J. Connolly and John E. McBurney, GREETING:

You and each of you are hereby commanded that you be and appear in said District Court of the United States, at the court room thereof, in Coeur d'Alene, in said district, within twenty days after service hereof, to answer the exigency of a bill of complaint exhibited and filed against you in our said Court, wherein Celia Diamond and William Diamond



and Bridget McGrail and John McGrail are complainants and you are defendants, and further to do and receive what our said District Court shall consider in this behalf and this you are in no wise to omit under the pains and penalties of what may befall thereon.

And this is to command you the marshal of said district, or your deputy, to make due service of this our Writ of Subpoena and to have then and there the same.

Hereof not fail.

Witness the Honorable Frank S. Dietrich, Judge of said District Court of the United States, and the seal of our said Court affixed at Boise, in said district, this twenty-third day of April, in the year of our Lord one thousand nine hundred and seventeen, and of the Independence of the United States the one hundred and forty-first.

(Seal) W. D. McREYNOLDS, Clerk.

By Pearl E. Zanger, Deputy Clerk.

---

MEMORANDUM pursuant to Equity Rule No. 12 of the Supreme Court of the United States:

The defendant is required to file his answer or other defense in the above entitled suit in the office of the clerk of said Court on or before the twentieth day after service; otherwise the Complainant's Bill therein may be taken *pro confesso*.

Endorsed, filed on return May 16, 1917.

W. D. McReynolds, Clerk.

(Title of Court and Cause.)

No. 681.

## AFFIDAVIT OF SERVICE.

State of Idaho,

County of Kootenai,—ss.

T. L. QUARLES, being first duly sworn, deposes and says: That he is, and at the several times mentioned herein was a citizen of the United States above the age of twenty-one years and not a party to the above entitled action; that he received the annexed Alias Subpoena Ad Respondendum on the twenty-sixth day of April, 1917, and personally served the same upon John J. Connolly and John E. McBurney, on the eleventh day of May, 1917, by delivering to each of said defendants, personally in the town of Harrison, Kootenai County, Idaho, a true copy of the annexed Subpoena Ad Respondendum, and at the same time I delivered to said defendant, John E. McBurney, a copy of the Bill of Complaint filed in said action.

T. L. QUARLES.

Subscribed and sworn to before me this twelfth day of May, 1917.

(N. P. Seal)

F. W. ESGATE.

Notary Public in and for the State of Idaho, residing  
at Coeur d'Alene.

State of Idaho,

County of Kootenai,—ss.

T. L. QUARLES, being first duly sworn, deposes and says:

That he is and at the several times hereinafter

mentioned was, a citizen of the United States, above the age of twenty-one years, and not a party to the above entitled action; that he received the annexed Alias Subpoena Ad Respondendum, in said action on the twenty-sixth day of April, 1917, and personally served the same upon Lawrence F. Connolly as administrator of the estate of John Corbett, deceased, and upon Lawrence F. Connolly, individually, upon the tenth day of May, 1917, by delivering to each of the said defendants, personally, in the city of Harrison, county of Kootenai, State of Idaho, a true copy of the ennexed Alias Subpoena Ad Respondendum; and at the same time delivered to the said defendant, Lawrence F. Connolly, a copy of the Bill of Complaint, filed in said action.

T. L. QUARLES.

Subscribed and sworn to before me, this twelfth day of May, 1917.

(N. P. Seal)

F. W. ESGATE,

Notary Public for the State of Idaho, residing at  
Coeur d'Alene, Idaho.

Filed March 30, 1917.

W. D. McReynolds, Clerk.

---

(Title of Court and Cause.)

No. 681.

NOTICE OF MOTION TO QUASH AND DISMISS.

To Celia Diamond and William Diamond, and Bridget McGrail and John McGrail, complainants, and to Caleb Jones and C. Redman Moon, solicitors for said complainants:

YOU AND EACH OF YOU WILL PLEASE TAKE NOTICE THAT Lawrence F. Connolly, sued in the above entitled suit as administrator of the estate of John Corbett, deceased, and individually, and John J. Connolly, defendants in the above entitled suit, appearing specially, solely and only herein for the purpose of this motion, will, by their solicitor, appearing specially, solely and only herein for the purpose of this motion, move the said District Court of the United States at the court room thereof in Coeur d'Alene City, in the county of Kootenai, State of Idaho, on Monday, the twenty-eighth day of May, A. D. 1917, at 10 o'clock in the forenoon of said day, or as soon thereafter as counsel can be heard, to quash and set aside the Alias Subpoena issued in the said suit on the twenty-third day of April, A. D. 1917, directed to said defendants, and to quash and set aside the service of said Alias Subpoena upon the defendant, Lawrence F. Connolly, as administrator of the estate of John Corbett, deceased, and upon said Lawrence F. Connolly, individually, and upon the said John J. Connolly, and the service of said Alias Subpoena upon each of them, and to dismiss the Bill of Complaint in the above entitled suit and said suit, for each of the reasons set forth in the motion of said defendants, Lawrence F. Connolly, sued in the above entitled suit as administrator of the estate of John Corbett, deceased, and individually, and John J. Connolly, which said motion is served herewith and made a part of this notice, and will then and there

submit to said District Court said motion for the decision of said Court thereon.

Said motion will be made upon the papers, files and records of said District Court in the above entitled suit.

C. W. BEALE,  
Solicitor for said defendants, Lawrence F. Connolly, sued in the above entitled suit as administrator of the estate of John Corbett, deceased, and Lawrence F. Connolly, individually, and John J. Connolly. Appearing specially, solely and only herein for the purpose of this Motion. Residence and postoffice address: Wallace, Idaho.

---

(Title of Court and Cause.)

No. 681.

**MOTION TO QUASH AND DISMISS.**

Comes now Lawrence F. Connolly, sued in the above entitled suit as administrator of the estate of John Corbett, deceased, and individually, and John J. Connolly, defendants in the above entitled suit, appearing specially, solely and only herein for the purpose of this motion, and, by their solicitor appearing specially, solely and only herein for the purpose of this motion, move the said District Court of the United States, upon the papers, filed and records of the said District Court in the above entitled suit, to quash and set aside the Alias Subpoena issued in said suit on the twenty-third day of April, A. D. 1917, directed to said defendants, and to quash and set aside the service of said Alias Subpoena upon the said defendants, Lawrence F. Connolly, as administrator



of the estate of John Corbett, deceased, and Lawrence F. Connolly, individually, and John J. Connolly, and the service of said Alias Subpoena upon each of them, and to dismiss the Bill of Complaint in the above entitled suit, and the said suit, for each of the following reasons, to-wit:

1. That said District Court has no jurisdiction of or over the person of said defendant, Lawrence F. Connolly, sued in the above entitled suit as administrator of the estate of John Corbett, deceased, or of or over the person of said defendant, Lawrence F. Connolly, individually, or of or over the person of any of the defendants in the above entitled suit, or jurisdiction of or over any of said defendants.

2. That said District Court has no jurisdiction of or over the subject matter of the above entitled suit, or of or over any part thereof, or jurisdiction of or over any action or cause of action, or any part thereof, or of or over any matter whatever set forth in the Bill of Complaint in the above entitled suit.

3. That William Connolly and Ellen Udell, mentioned in the Bill of Complaint in the above entitled suit, were not at the time of the commencement of said suit and are not now citizens or residents of the State of Idaho, or citizens or residents of the District of Idaho, and that neither of them was at the time of the commencement of the said suit, or now is a citizen or resident of the State of Idaho, or a citizen or resident of the District of Idaho; but were at the time of the commencement of the above entitled suit and now are citizens and residents of the State of Nebraska,

and each of them is a citizen and resident of the State of Nebraska.

4. That said William Connolly and Ellen Udell are indispensable defendants and parties defendant in the above entitled suit and each of them is an indispensable defendant and party defendant therein, and that a final judgment cannot be made in the above entitled suit without affecting their joint interests and the joint interests of each of them, and that a final judgment cannot be made therein without leaving the controversy in said suit in such a condition that final determination would be wholly inconsistent with equity and good conscience.

5. That the matter in controversy in said suit is not between citizens of different states, or between citizens of the State of Idaho and a citizen or citizens of any other state, so as to give said District Court jurisdiction.

6. That it appears upon the face of the Bill of Complaint in the above entitled suit that the plaintiffs therein are residents and citizens of the State of Pennsylvania, and that the said William Connolly and Ellen Udell are indispensable parties defendant therein and thereto, and that they are not citizens and residents of the State of Idaho, but are citizens and residents of the State of Nebraska, and that said District Court has no jurisdiction of said suit, or of the Bill of Complaint therein, or of the subject matter thereof, or of any of the defendants mentioned in said suit, or of the said William Connolly and Ellen Udell, mentioned in said Bill of Complaint in said suit, or of either of them.

7. That said suit was not commenced in said District Court to enforce any legal or equitable lien upon or claim to any real or personal property within said district of Idaho, where said suit was brought, or to remove any encumbrance or lien or cloud upon the title to any real or personal property within said district of Idaho, where said suit was brought.

8. That said suit was not commenced to enforce any legal or equitable lien upon or claim to any real or personal property whatever, or to remove any encumbrance or lien or cloud upon the title to any real or personal property whatever.

9. That there is no property, real or personal, involved in said suit within the said district of Idaho, where said suit was brought.

10. That said suit was not commenced under or in pursuance of or by authority of the provisions or any provisions of Section 57 of the Judicial Code of the United States; nor is said suit or the subject matter thereof, nor the subject matter of said Bill of Complaint therein, or any part thereof, contemplated by or included within or provided for in the provisions or any provision of said Section 57; nor is said suit or said Bill of Complaint authorized by said Section 57, or by any of its provisions.

C. W. BEALE,

Solicitor for said defendants, Lawrence F. Connolly, sued in the above entitled suit as administrator of the estate of John Corbett, deceased, and Lawrence F. Connolly, individually, and John J. Connolly. Appearing specially, solely and only herein for the



purpose of this Motion. Residence and postoffice address: Wallace, Idaho.

I hereby certify that I believe the above and foregoing Motion well founded in point of law and that said Motion is not interposed for delay.

C. W. BEALE,

Solicitor for said defendants, Lawrence F. Connolly, sued in the above entitled suit as administrator of the estate of John Corbett, deceased, and Lawrence F. Connolly, individually, and John J. Connolly. Appearing specially, solely and only herein for the purpose of this Motion. Residence and postoffice address: Wallace, Idaho.

Service of the within Notice of Motion and Motion, admitted, accepted and received true copies of said Notice of Motion and Motion received and accepted this twenty-first day of May, 1917.

CALEB JONES,

C. REDMAN MOON,

Solicitors for Complainants.

Endorsed, filed May 23, 1917.

W. D. McReynolds, Clerk.

By L. M. Larson, Deputy.

---

(Title of Court and Cause.)

No. 681.

OBJECTION TO JURISDICTION OF COURT  
AND MOTION TO DISMISS FOR WANT  
OF JURISDICTION.

Now comes John E. McBurney, one of the above named defendants, appearing specially for the purpose of this motion only by his solicitor, and moves

the District Court of the United States for the District of Idaho, Northern Division, to dismiss the Bill of Complaint in the above entitled action, for the reason and upon the ground that said Court does not have jurisdiction in this action in this:

That it appears that the plaintiffs are non-residents of the State of Idaho and are residents, to-wit, of the State of Pennsylvania, and that it also appears from said Bill of Complaint that Ellen Udell and William Connolly are also necessary and proper parties to this action, and that they received a part of said property and said action cannot be determined without their presence, and said William Connolly and Ellen Udell are as alleged in paragraph twenty-two of said Bill of Complaint, citizens and residents of the State of Nebraska and jurisdiction cannot be had of them herein, and that this court is without jurisdiction to entertain, hear, decide or determine said case as against this defendant.

Wherefore, this defendant moves that this action be dismissed for want of jurisdiction of the Court to entertain said Bill of Complaint.

EZRA R. WHITLA,  
Attorney and Solicitor for said Defendant, John E. McBurney.

I hereby certify that I believe the above motion well founded in point of law, and said motion is not made for the purpose of delay.

EZRA R. WHITLA,  
Solicitor and Attorney for Defendant, J. E. McBurney.

Endorsed, filed May 29, 1917.

W. D. McReynolds, Clerk.

(Title of Court and Cause.)

No. 681.

MOTION TO DISMISS.

Without waiving their objection to the jurisdiction of the Court herein, come now Lawrence F. Connolly, sued in the above entitled suit as administrator of the estate of John Corbett, deceased, and individually, and John J. Connolly, defendants in the above entitled suit, and by their solicitor move and each of them by his solicitor moves the said District Court of the United States for the District of Idaho, Northern Division, to dismiss the Bill of Complaint in the above entitled suit and the said suit and each of them for each of the following reasons, to-wit:

1. That said Bill of Complaint in the above entitled suit does not contain facts sufficient to constitute a valid cause of action in equity or a cause of action at all against the said defendant, Lawrence F. Connolly, sued in the above entitled action as administrator of the estate of John Corbett, deceased, or against said Lawrence F. Connolly individually.

2. That said Bill of Complaint in the above entitled suit does not contain facts sufficient to constitute a valid cause of action in equity or a cause of action at all against the said defendant, John J. Connolly.

3. That there is a misjoinder of causes of action in said suit and in said Bill of Complaint in this: That a cause of action for an accounting between the said plaintiffs and said defendants, Lawrence F. Connolly and John J. Connolly, and a cause of action between said plaintiffs and said defendants, Lawrence

F. Connolly and John J. Connolly and John E. McBurney, upon a bond alleged to have been executed by the defendant, Lawrence F. Connolly, as principal, and by the defendants, John J. Connolly and John E. McBurney, as surety.

4. That the cause of action set forth in the Bill of Complaint in the above entitled action for an accounting is barred by the provisions of Section 5627 of the Code of Civil Procedure of the Idaho Revised Codes.

5. That the cause of action set forth in the Bill of Complaint in the above entitled action on the bond set forth therein, is barred by the provisions of Section 5627 of the Code of Civil Procedure of the Idaho Revised Codes.

6. That the cause of action set forth in the Bill of Complaint in the above entitled action for an accounting is barred by the provisions of Section 5666 of the Code of Civil Procedure of the Idaho Revised Codes.

7. That the cause of action set forth in the Bill of Complaint in the above entitled action of the bond set forth therein, is barred by the provisions of Section 5666 of the Code of Civil Procedure of the Idaho Revised Codes.

8. That the cause of action set forth in the Bill of Complaint in the above entitled action for an accounting is barred by the provisions of Subdivision 7 of Section 4831 of the Code of Civil Procedure of the Idaho Revised Codes.

9. That the cause of action set forth in the Bill of Complaint in the above entitled action on the bond set

forth therein is barred by the provisions of Subdivision 7 of Section 4831 of the Code of Civil Procedure of the Idaho Revised Codes.

10. That the cause of action set forth in the Bill of Complaint in the above entitled action for an accounting is barred by the provisions of Section 4834 of the Code of Civil Procedure of the Idaho Revised Codes.

11. That the cause of action set forth in the Bill of Complaint in the above entitled action on the bond set forth therein is barred by the provisions of Section 4834 of the Code of Civil Procedure of the Idaho Revised Codes.

12. That the cause of action set forth in the Bill of Complaint in the above entitled action on the bond set forth therein is barred by the provisions of Subdivision 4 of Section 4054 of the Code of Civil Procedure of the Idaho Revised Codes.

13. That the cause of action set forth in the Bill of Complaint in the above entitled action for an accounting is barred by the provisions of Subdivision 4 of Section 4054 of the Code of Civil Procedure of the Idaho Revised Codes.

14. That the cause of action set forth in the Bill of Complaint on any alleged fraud of Lawrence F. Connolly, administrator of the estate of John Corbett, deceased, is barred by the provisions of Section 5627 of the Code of Civil Procedure of the Idaho Revised Codes.

15. That the cause of action set forth in said Bill of Complaint on any trust relation between the said



Lawrence F. Connolly, as administrator of the estate of John Corbett, deceased, or any of said plaintiffs, is barred by the provisions of Section 5627 of the Code of Civil Procedure of the Idaho Revised Codes.

16. That the cause of action set forth in the Bill of Complaint on any alleged fraud of Lawrence F. Connolly, administrator of the estate of John Corbett, deceased, is barred by the provisions of Section 5666 of the Code of Civil Procedure of the Idaho Revised Codes.

17. That the said cause of action set forth in said Bill of Complaint on any trust relation between the said Lawrence F. Connolly, administrator of the estate of John Corbett, deceased, or any of said plaintiffs, is barred by the provisions of Section 5666 of the Code of Civil Procedure of the Idaho Revised Codes.

18. That the cause of action set forth in said Bill of Complaint on any alleged fraud of Lawrence F. Connolly, administrator of the estate of John Corbett, deceased, is barred by the provisions of Subdivision 7 of Section 4831 of the Code of Civil Procedure of the Idaho Revised Codes.

19. That the cause of action set forth in said Bill of Complaint on any trust relation between the said Lawrence F. Connolly, administrator of the estate of John Corbett, deceased, or any of said plaintiffs, is barred by the provisions of Subdivision 7 of Section 4831 of the Code of Civil Procedure of the Idaho Revised Codes.

20. That the cause of action set forth in the Bill



of Complaint on any alleged fraud of Lawrence F. Connolly, administrator of the estate of John Corbett, deceased, is barred by the provisions of Section 4834 of the Code of Civil Procedure of the Idaho Revised Codes.

21. That the cause of action set forth in said Bill of Complaint on any trust relation between the said Lawrence F. Connolly, administrator of the estate of John Corbett, deceased, or any of the plaintiffs, is barred by the provisions of Section 4834 of the Code of Civil Procedure of the Idaho Revised Codes.

22. That the cause of action set forth in the Bill of Complaint on any alleged fraud of Lawrence F. Connolly, administrator of the estate of John Corbett, deceased, is barred by the provisions of Subdivision 4 of Section 4054 of the Code of Civil Procedure of the Idaho Revised Codes.

23. That the cause of action set forth in said Bill of Complaint on any trust relation between the said Lawrence F. Connolly, administrator of the estate of John Corbett, deceased, or any of said plaintiffs, is barred by the provisions of Subdivision 4 of Section 4054 of the Code of Civil Procedure of the Idaho Revised Codes.

24. That it appears by the plaintiffs' own showing by the said Bill of Complaint that they are not, nor is any of them, entitled to the relief prayed for by the said Bill of Complaint against the defendants, or any of them, for the reason that they are guilty of laches, and each of them is guilty of laches in not sooner asserting their pretended right or claim to

the property as heirs to the property mentioned in said Bill of Complaint, it appearing from said Bill of Complaint that the said plaintiffs were advised as early as August, 1910, of the death of John Corbett, deceased, and of the decree of distribution referred to in said Bill of Complaint, and that the Bill of Complaint is without equity.

Said motion will be made upon the files, records and papers of said District Court in the above entitled suit.

25. That the cause of action set forth in the Bill of Complaint in the above entitled action is barred by the provisions of Section 5627 of the Code of Civil Procedure of the Idaho Revised Codes.

26. That the cause of action set forth in the Bill of Complaint in the above entitled action on the bond set forth therein is barred by the provisions of Section 4052 of the Code of Civil Procedure of the Idaho Revised Codes.

C. W. BEALE,  
Solicitor for said Defendants, Lawrence F. Connolly,  
sued in the above entitled suit as administrator of  
the estate of John Corbett, deceased, and Lawrence  
F. Connolly, individually, and John J. Connolly.  
Residence and postoffice address: Wallace,  
Idaho.

I hereby certify that I believe the above and foregoing motion well founded in point of law and said motion is not made for delay.

C. W. BEALE,  
Solicitor for said Defendants, Lawrence F. Connolly,

sued in the above entitled action as administrator of the estate of John Corbett, deceased, and Lawrence F. Connolly, individually, and the said John J. Connolly. Residence and postoffice address: Wallace, Idaho.

Endorsed, filed May 29, 1917.

W. D. McReynolds, Clerk.

---

(Title of Court and Cause.)

No. 681.

MOTION OF DEFENDANT, JOHN E. McBURNEY, TO DISMISS.

Without waiving objection to the jurisdiction of the Court herein, comes now John E. McBurney, one of the above named defendants, in his own behalf only, by his solicitor, and moves the District Court of the United States for the district of Idaho, Northern Division, to dismiss said Bill of Complaint in the above entitled suit, and each and every part thereof as against this defendant, for the following reasons:

1. That said Bill of Complaint in the above entitled suit does not contain facts sufficient to constitute a valid cause of action, in equity or at law, or any cause of action at all against this defendant.

2. That there is a misjoinder of causes of action in said suit in said Bill of Complaint in this: In that this is a cause of action for an action upon an alleged fraud and for property wrongfully received by the defendants, and Lawrence F. Connolly and John J. Connolly have been joined with a pretended cause of action against this defendant as an alleged surety

upon a bond alleged to have been executed by the defendant, Lawrence F. Connolly, as principal, and by this defendant and John J. Connolly, as sureties, without showing any liability as against this defendant.

4. That the cause of action set forth in the Bill of Complaint in the above entitled action for an accounting is barred by the provisions of Section 5627 of the Code of Civil Procedure of the Idaho Revised Codes.

5. That the cause of action set forth in the Bill of Complaint in the above entitled action on the bond set forth therein is barred by the provisions of Section 5627 of the Code of Civil Procedure of the Idaho Revised Codes.

6. That the cause of action set forth in the Bill of Complaint in the above entitled action for an accounting is barred by the provisions of Section 5666 of the Code of Civil Procedure of the Idaho Revised Codes.

7. That the cause of action set forth in the Bill of Complaint in the above entitled action on the bond set forth therein, is barred by the provisions of Section 5666 of the Code of Civil Procedure of the Idaho Revised Codes.

8. That the cause of action set forth in the Bill of Complaint in the above entitled action for an accounting is barred by the provisions of Subdivision 7 of Section 4831 of the Code of Civil Procedure of the Idaho Revised Codes.

9. That the cause of action set forth in the Bill of Complaint in the above entitled action on the bond set forth therein is barred by the provisions of Subdi-

vision 7 of Section 4831 of the Code of Civil Procedure of the Idaho Revised Codes.

10. That the cause of action set forth in the Bill of Complaint in the above entitled action for an accounting is barred by the provisions of Section 4834 of the Code of Civil Procedure of the Idaho Revised Codes.

11. That the cause of action set forth in the Bill of Complaint in the above entitled action on the bond set forth therein is barred by the provisions of Section 4834 of the Code of Civil Procedure of the Idaho Revised Codes.

12. That the cause of action set forth in the Bill of Complaint in the above entitled action on the bond set forth therein is barred by the provisions of Subdivision 4 of Section 4054 of the Code of Civil Procedure of the Idaho Revised Codes.

13. That the cause of action set forth in the Bill of Complaint in the above entitled action for an accounting is barred by the provisions of Subdivision 4 of Section 4054 of the Code of Civil Procedure of the Idaho Revised Codes.

14. That the cause of action set forth in the Bill of Complaint on a charge of fraud against Lawrence F. Connolly, as administrator of the estate of John Corbett, deceased, is barred by the provisions of Section 5627 of the Code of Civil Procedure of the Idaho Revised Codes, and that any rights of any person to bring an action against said administrator of the estate of John Corbett, deceased, would be barred, and that after said limitation has run no action could



be maintained against this defendant as a bondsman of said Lawrence F. Connolly.

15. That the cause of action set forth in said Bill of Complaint on any trust relation between the said Lawrence F. Connolly, as administrator of the estate of John Corbett, deceased, or any of said plaintiffs, is barred by the provisions of Section 5627 of the Code of Civil Procedure of the Idaho Revised Codes.

16. That the cause of action set forth in the Bill of Complaint on any alleged fraud of Lawrence F. Connolly, administrator of the estate of John Corbett, deceased, is barred by the provisions of Section 5666 of the Code of Civil Procedure of the Idaho Revised Codes.

17. That the said cause of action set forth in said Bill of Complaint or any trust relation between the said Lawrence F. Connolly, administrator of the estate of John Corbett, deceased, or any of said plaintiffs, is barred by the provisions of Section 5666 of the Code of Civil Procedure of the Idaho Revised Codes.

18. That the cause of action set forth in said Bill of Complaint on any alleged fraud of Lawrence F. Connolly, administrator of the estate of John Corbett, deceased, is barred by the provisions of Subdivision 7 of Section 4831 of the Code of Civil Procedure of the Idaho Revised Codes.

19. That the cause of action set forth in said Bill of Complaint or any trust relation between the said Lawrence F. Connolly, administrator of the estate of



John Corbett, deceased, or any of said plaintiffs, is barred by the provisions of Subdivision 7 of Section 4831 of the Code of Civil Procedure of the Idaho Revised Codes.

20. That the cause of action set forth in the Bill of Complaint on any alleged fraud of Lawrence F. Connolly, administrator of the estate of John Corbett, deceased, is barred by the provisions of Section 4834 of the Code of Civil Procedure of the Idaho Revised Codes.

21. That the cause of action set forth in said Bill of Complaint on any trust relation between the said Lawrence F. Connolly, administrator of the estate of John Corbett, deceased, or any of the plaintiffs, is barred by the provisions of Section 4834 of the Code of Civil Procedure of the Idaho Revised Codes.

22. That the cause of action set forth in the Bill of Complaint on any alleged fraud of Lawrence F. Connolly, administrator of the estate of John Corbett, deceased, is barred by the.....

---

23. That the cause of action set forth in said Bill of Complaint on any trust relation between the said Lawrence F. Connolly, administrator of the estate of John Corbett, deceased, or any of said plaintiffs, is barred by the provisions of Subdivision 4 of Section 4054 of the Code of Civil Procedure of the Idaho Revised Codes.

24. That plaintiffs' Bill of Complaint shows that they have known of the alleged fraud of Lawrence F. Connolly as administrator of said estate for more

than five years prior to the commencement of this action, and that if any fraud was committed they have shown no sufficient reason to excuse themselves for not sooner commencing their action.

25. That the cause of action set forth in the Bill of Complaint in the above entitled action is barred by the provisions of Section 5627 of the Code of Civil Procedure of the Idaho Revised Codes.

26. That the cause of action set forth in the Bill of Complaint in the above entitled action on the bond set forth therein is barred by the provisions of Section 4052 of the Code of Civil Procedure of the Idaho Revised Codes.

27. That the complaint in this action alleges and shows that said Lawrence F. Connolly has complied with all of orders of the Probate Court in the estate of John Corbett, deceased, and that by reason thereof no liability whatever has been or can be imposed upon this defendant as a bondsman or surety for the performance of said duties.

28. That said complaint does not allege, state or show that this defendant was a party to the alleged fraud of Lawrence F. Connolly as administrator, or personally, or on account of an improper division or distribution of said estate, or that he knew anything about the same, or that he is, was or could be in any manner whatever liable therefor.

29. That said Bill of Complaint, as to this defendant, is prematurely brought, and that any right of action whatever would not accrue as against this defendant as surety upon the bonds of Lawrence F.

Connolly, as administrator of the estate of John Corbett, deceased, until some lawful order was made by a court having jurisdiction requiring him as administrator of the estate of John Corbett, deceased, to do or perform some act, and his refusal to comply with such order.

30. That the complaint in this action shows upon its face that the defendant, Lawrence F. Connolly, as administrator of the estate of John Corbett, deceased, complied with the orders of the Probate Court of Kootenai County, Idaho, in the distribution of said estate and has complied with all of the orders of said Court and the courts having jurisdiction, and that by so doing no liability whatever has attached as against this defendant.

This motion will be made and based upon the records and files of this action, and particularly upon the Bill of Complaint filed herein.

EZRA R. WHITLA,  
Solicitor for Defendant, John E. McBurney, only.  
Residence and postoffice address: Coeur d'Alene,  
Idaho.

I hereby certify that I believe the above and foregoing motion well founded in point of law and said motion is not made for delay.

EZRA R. WHITLA,  
Solicitor for Defendant, John E. McBurney, only.  
Residence and postoffice address: Coeur d'Alene,  
Idaho.

Endorsed, filed May 31, 1917.

W. D. McReynolds, Clerk.

*Coeur d'Alene, Northern Division, May 28, 1917,  
May Term, First Judicial Day.*

CELIA DIAMOND, *et al.*,

vs.

LAWRENCE F. CONNOLLY *et al.*

CIVIL No. 681.

The defendants' motion to quash and dismiss the complaint was argued before the Court by counsel for the respective parties, whereupon the Court announced his decision and denied the motion upon the question of jurisdiction, without prejudice to the filing of a motion to dismiss upon other grounds, the defendant taking exceptions to the ruling of the Court. *Coeur d'Alene, May 31, 1917, Fourth Judicial Day.*

Counsel for the defendant, John F. McBurney confessed his motion to dismiss the complaint for want of jurisdiction, to be without proper grounds, and asked that the same be denied with permission to file a motion upon other grounds, which was granted by the Court.

Motions to dismiss the complaint were then argued before the Court by counsel for the respective parties, and were by the Court taken under advisement.

(Title of Court and Cause.)

No. 681.

DECISION ON MOTION TO DISMISS.

*July 10, 1917.*

Caleb Jones, Solicitor for Plaintiffs.

C. W. Beale and E. R. Whitla, Solicitors for Defendants.

Dietrich, District Judge.

---

The complaint shows that:

The plaintiff, Celia Diamond, is the wife of William Diamond, and Bridget McGrail is the wife of John McGrail. The two women are sisters, and were born in Galway, Ireland, the daughters of Austin Madden and Bridget Madden, his wife. John Corbett, their mother's half-brother, died on January 30, 1907, in Kootenai County, Idaho, where he left a substantial estate. Thereafter the defendant, Lawrence F. Connolly, duly qualified as administrator of the estate, and letters issued to him out of the Probate Court of that county on February 20, 1907. Upon August 2, 1909, he filed a petition praying for a distribution of the estate, "therein falsely representing to said Court that he" and his two brothers, William and John J., and his sister, Ellen Udell, "were the heirs at law of said John Corbett, deceased," such representations being made, so it is alleged, with the knowledge and assent of his brothers and sister, "and with the intent to deceive the said Probate Court and to defraud" the plaintiffs, who were in reality the heirs. Acting upon such petition, and being induced



by the false statements therein contained, the Probate Court, presumably after due notice as prescribed by law, etc., on August 23, 1909, entered a decree distributing the whole of the estate to Lawrence F. Connolly and his co-defendant John J. Connolly, and William Connolly and Ellen Udell, in equal portions. The latter two distributees are not made parties defendant, for the reason, as alleged, that they are beyond the jurisdiction of the Court. The defendants, John J. Connolly and John E. McBurney were sureties on the administrator's bond. Claiming to be the rightful heirs, the plaintiffs seek to charge Lawrence F. Connolly with responsibility for the entire estate, the sureties with responsibility up to the limit of the penalty of their bond, and John J. Connolly, as distributee, up to the amount of the estate received by him. Defendants call into question the sufficiency of the bill by a motion to dismiss. In the view I feel impelled to take of certain controlling questions, it is not thought to be necessary to set forth more in detail the prayer or to discuss the theory upon which plaintiffs assert the right to recover upon the bond or to recover from Lawrence F. Connolly more than his distributive share. Nor is there need to recite in detail the facts and circumstances and the statutory provisions or the principles of general law upon which the claim is predicated that the plaintiffs were at the time the proceedings for distribution were taken entitled to succeed to the whole of the estate. Assuming, without deciding, that the plaintiffs were more closely related to the deceased than the distributees,



and that, after their mother, they were next of kin, and that by reason of their mother's alienage disqualifying her from inheriting, they became the heirs at law of the deceased, not through their mother, but in their own right, are the facts exhibited by the bill otherwise sufficient to entitle them to relief? Three times already the defendant, Lawrence F. Connolly has been drawn into court upon a similar charge of fraud, once in this Court (the case being unreported), and twice in the State courts, as appears from *Connolly v. Reed*, 22 Idaho, 29, and *Connolly v. Probate Court*, 25 Idaho, 35. By assumption there is no privity between the plaintiffs and Bridget Madden, and, therefore, they are not estopped by the judgments entered in these suits carried on by her or upon her behalf. But the statutory proceeding for the distribution of an estate is in the nature of a suit *in rem*, and when taken in compliance with the law the decree, upon becoming final, is deemed to be binding upon all the world. *Connolly v. Reed*, and *Connolly v. Probate Court*, *supra*. There is here no charge of irregularity of procedure, and, therefore, it will be presumed that due notice was given and that generally the law was complied with. It follows that, unless nullified by fraud, the decree foreclosed the claims of all parties, including those of the plaintiffs here. So much, as I understand, the plaintiffs concede, but they say the decree was procured through fraud. What are the facts disclosed by the pleading in this respect, and can the decree be assailed on account thereof? The averments are, that, with the

knowledge and assent of his brothers and sister, the defendant, Lawrence F. Connolly, with the intent to deceive the Court and to defraud the plaintiffs, falsely represented in his petition for distribution that he and his co-distributees were the heirs of the deceased, and that the Court acted upon such representations. There is further statement to the effect that the distributees did not advise Corbett's relatives of his death until about a year after the decree of distribution was made. Such is the extent of the charge of fraud both in scope and in detail. There is no averment that Connolly either represented in the petition or testified before the Court that the deceased left no relatives other than the distributees, or that he made any false statement or concealed any fact touching the existence of the plaintiffs or their relationship to the deceased. The falsity, if any there was, consisted of the claim or representation that the Connollys were the only heirs—not even that they were next of kin of the deceased. A claim or representation of heirship manifestly involves mixed questions of law and fact. The verity of this statement is most strikingly exemplified upon the face of the bill. Bridget Madden repeatedly claimed and pleaded that she was the only heir, and yet the Supreme Court of the State denied her claim, and the plaintiffs now assert that she was not entitled to inherit. Is she, therefore, to be charged with fraud because she repeatedly came into the courts and represented that she was the heir? As the bill further discloses, the plaintiffs repeatedly took legal advice, and

until recently were informed that they were not heirs. They have now come into Court asserting a right to inherit, but should the courts hold against them, would they be chargeable with an attempt to deceive? The illustrations are to the point that a party cannot be subjected to a charge of actionable fraud because in his pleading he may make a claim involving doubtful questions of mixed law and fact. It is true that the plaintiffs further aver that this representation was made by Connolly with the intent to deceive the Court and to defraud the plaintiffs, but in the absence of averments of specific facts from which an inference of a wicked intent may be properly drawn, this language must be held to mean nothing more than that the claim was made with the intent on the part of Connolly to induce the Court to distribute the estate to him and his sister and brothers. There is no charge that he misrepresented any material fact to the Court, or wilfully withheld any information, or resorted to any trick or device, or did anything or left anything undone which it was his duty to do, for the purpose of preventing the plaintiffs from having their day in Court or fully and fairly presenting their claims for adjudication. It is very plain from the diversity of advice given, and from the decisions of the Courts as set forth and explained in the bill, that if all the facts of kinship here exhibited by the bill had been before it, the Probate Court might, with much show of reason, have entered the decree now complained of. Under such conditions we ought not to consider as sufficient, and to entertain for any purpose, a charge

of fraud so general and so barren of circumstantial detail.

But even if it were shown that the Connollys wilfully set forth in the petition for distribution material facts in respect to their relation to the deceased, which they knew to be untrue, for the purpose of securing a decree in their favor, I would still be inclined to regard the bill as insufficient. It must be borne in mind that there is no suggestion of extrinsic fraud, that is, conduct upon the part of the defendants intended to deceive the plaintiffs or to prevent them from having a fair hearing upon their claims in the Probate Court. Such notice of the hearing as the law of the State requires was given, and Connolly made no false or other representation to the plaintiffs. He did nothing to prevent them from presenting their claim or having it considered, nor did he fail in the discharge of any duty which he owed them. The full extent of his wrongdoing, if any there was, consisted of making a contention in open court that he and his brothers and sister were the heirs. Suppose he had gone further and upon the hearing had falsely testified that the deceased left no other relatives at all,—at most we would have a case of intrinsic fraud. And, indeed, that only intrinsic fraud is intended to be charged in the bill is, as I understand, admitted by counsel for the plaintiffs. For present purposes it may be assumed, but it is not decided, that a decree of distribution is not a judgment of exceptional character like the probate of a will. *The Broderick Will Case*, 21 Wall 503. *Stead vs. Curtis*,

191 Fed. 529; s. c., 205 Fed. 439; it will be deemed to stand upon the same footing with ordinary judgments and decrees of courts of record. That is the most favorable view to the plaintiffs which it is possible to take. I further understand that counsel for the plaintiffs here concede what was conceded in the *Stead* case, namely, that it is a universal rule that in the absence of statutory authority equity does not set aside judgments of any kind for intrinsic fraud. *Stead vs. Curtis, supra*, and the cases therein cited. Thus conceding that only intrinsic fraud is charged, and that courts of equity do not exercise jurisdiction to set aside judgments on account thereof, the plaintiffs attempt to distinguish between the exercise of equitable jurisdiction to vacate or nullify a judgment in the technical sense, and the exercise thereof for the purpose of depriving the party profiting by the judgment of all benefit therefrom. But aside from cases of the most exceptional character, courts of equity do not under any conditions possess or attempt to exercise the power of authority to go into a court where the objectionable judgment was rendered and technically vacate the judgment or in any wise modify the record. When granted at all, relief is, as a general rule, given against the party benefited or in respect to the property affected by the judgment. The result is, of course, the same, for there is no substantial difference between vacating a judgment upon the record and nullifying it in effect by denying its validity and taking away from the successful party the entire fruits thereof. There is no basis for the juris-



dictional distinction which the plaintiffs attempt to make. The reason, and substantially the only reason, underlying the rule that courts of equity will not interfere with judgments on the ground of intrinsic fraud alone, is lucidly and tersely stated by Mr. Justice Miller in the leading case of *United States vs. Throckmorton*, 98 U. S. 61, as follows: "That the mischief of retrying every case in which the judgment or decree rendered on false testimony, given by perjured witnesses, or on contracts or documents whose genuineness or validity was in issue, and which are afterward ascertained to be forged or fraudulent, would be greater, by reason of the endless nature of the strife, than any compensation arising from doing justice in individual cases." But such a reason operates quite as cogently against the exercise of equitable jurisdiction to grant the relief here sought as technically to adjudge the decree of distribution void and to vacate it of record. For if we can in this action disregard the probate judgment and divest the distributees of their title, and pass the property to the plaintiffs, another court of equity may, next year, upon representations that our decree was procured by false pleadings and perjured testimony, re-amine the issues, and, if satisfied that false statements were made, take the property from the plaintiffs and return it to the distributees, and so on indefinitely, and we should have the very evil which the rule of the *Throckmorton* case is designed to prevent. Counsel cited, as tending to support the plaintiff's view, *Sohler vs. Sohler* (Cal.), 67 Pac. 282, 285. But that such



is not the doctrine of the California courts even under a statute which would seem to strengthen, if it does not add to, the remedial rights of the aggrieved party, reference need only be made to such cases as *Lynch vs. Rooney*, 44 Pac. 565, and *Mulcahey vs. Dow*, 63 Pac. 158, where the conditions and contentions were very similar to those here presented, and the more recent case of *Bacon vs. Bacon*, 89 Pac. 317, where the Supreme Court of California sums up the doctrine prevailing in that State as follows:

"*Lynch vs. Rooney*, 112 Cal. 282, 44 Pac. 565, was an attempt to review a decree of distribution and declare an involuntary trust, upon a showing that the decree was procured by false or mistaken testimony. The case is one of the class where the fraud or mistake is intrinsic. In such cases no relief can be given. *Pico vs. Cohn*, 91 Cal. 133, 25 Pac. 970, 27 Pac. 537, 13 L. R. A. 336, 25 Am. St. Rep. 159; *U. S. vs. Throckmorton*, *supra*. If the latter part of the opinion in this case was intended to declare that such decrees may not be reviewed for extrinsic fraud in procuring them to be made, it must be considered as overruled by the decision in *Sohler vs. Sohler*, *supra*. In *Mulcahey vs. Dow*, 131 Cal. 73, 63 Pac. 158, the opinion conceded that a distributee may, in a proper case, be held as an involuntary trustee, but decides that the fraud there shown was not extrinsic or collateral." And see also, to the same effect, *Goodrich vs. Ferris* (Cal.), 145 Fed. 844. It is urged that if this view be taken the decisions of some of the high courts will be found to be flatly contradictory one to

the other and certain illustrative cases are cited. A measure of conflict there doubtless is, but when viewed in the light of their facts, and when we consider that very often the unqualified general term fraud is used in referring to what is really extrinsic fraud, the cases cited as examples do not present serious difficulty. While the points we have been discussing are not very clearly articulated in the Idaho cases growing out of this estate (*supra*), if I rightly construe them they are not out of harmony with the views herein expressed. The allegations of fraud there were substantially the same as they are here, and in the last case (*Connolly vs. Probate Court*, 25 Idaho 35) it is said:

“Since the decrees of probate courts are conclusive in such matters, unless reversed on appeal, the State of Idaho, on the relation of its Attorney General, cannot have such decrees set aside in the interest of a foreign and non-resident heir. As fully supporting this rule, see *William Hill Co. vs. Lawler*, 166 Cal. 359, 68 Am. St. 27, 48 Pac. 323. The Supreme Court of California in that case, after stating that the proceeding for the distribution of an estate is in the nature of a proceeding *in rem*, which is in the hands of an administrator or executor for distribution, says:

“By giving the notice directed by the statute, the entire world is called before the court, and the court acquires jurisdiction over all persons for the purpose of determining their rights to any portion of the estate; and every person who may assert any right of interest therein is required to present his claim to the

Court for its determination. Whether he appear and present his claim or fail to appear, the action of the Court is equally conclusive upon him, 'subject only to be reversed, set aside or modified on appeal.' The decree is as binding upon him if he fails to appear and present his claim as if his claim after presentation had been disallowed by the Court." \* \* \*

"There is no question but that the proper notices were given in the administration of said estate and that all the world was notified of the proceedings in said matter, and that Bridget Madden made no appearance in said matter whatever, and did not bring these proceedings until more than two years after the decree of distribution had been made and entered by said Probate Court." \* \* \* "The allegations of the Attorney General in the petition of the State in regard to the fraud practiced by the Connollys are quite similar to the allegations of fraud set up in the petition which the Court had under consideration in the case of *Connolly vs. Reed, supra*, and the allegations in that petition and the amended petition in that case this Court held did not constitute fraud, and we do not think the allegations of the petitions of the Attorney General charge fraud on the part of the Connollys, since it nowhere appears that through fraud or otherwise the defendants, the Connollys, kept Bridget Madden from appearing and asserting her rights, as it is not alleged that they made any misrepresentations or deceived her as to the facts of the case."

But if a different view were to be taken it would

still be necessary to hold that the plaintiffs are barred from recovery by their own laches. As we have seen, Corbett died January 30, 1907. Letters of administration issued February 20, 1907. The decree of distribution was entered August 23, 1909. This suit was commenced March 29, 1917, or seven years and seven months after the distribution. If the suit had been brought in the State court plaintiffs' cause of action would have been subject to a local statute of limitations providing that "an action for relief on the ground of fraud or mistake" must be brought within three years from the "discovery by the aggrieved party of the facts constituting the fraud or mistake." The plaintiffs admit that they learned of the death of Corbett at least as early as May, 1910, and thereupon consulted a lawyer touching the question of their heirship. They allege that on March 14, 1912, their mother instituted an action to establish her claim of heirship, and later commenced other proceedings to the same end, and that in all of such litigation they did "all in their power to further the interest of their mother." It must, therefore, be assumed that at least as early as March 14, 1912, more than five years before the commencement of this action, they had knowledge of Connolly's representations in the Probate Court, which they now charge to have been false and fraudulent. To overcome the presumption of laches, which they admit arises from the running of the period prescribed by the Idaho Statute, the only explanation they have to offer is that they repeatedly took legal advice in respect to their rights, and up to



about the time the suit was commenced they were always informed that they were not the heirs of the deceased. But can such an excuse avail them here? In reason I think the better rule would be to regard the State Statute as absolutely binding in the premises. It is admittedly fair and reasonable, and it would tend to bring discredit upon the administration of the law, if, by reason of the mere accident of residence, as a consequence of which the plaintiffs are entitled to invoke the jurisdiction of this Court, they could recover in a case where citizens of the State, with like claims, would be debarred from recovering. The statute, it is to be observed, is not limited to actions at law, but applies equally to suits in equity. But if we take the view which is the most favorable to the plaintiffs, namely, that in equity suits in the federal courts state statutes, whatever their nature or scope, are to be respected only by way of analogy in considering the defense of laches, and that the running of the period prescribed therein merely raises a rebuttable presumption of laches, our conclusions must be the same. The bill does not exhibit a case of flagrant, concealed fraud. Insofar as there was any misrepresentation at all the facts constituting it were made a public record. There is no suggestion that the defendants by corrupt or improper methods were in any wise responsible for the unfavorable legal advice given to the plaintiffs. Apparently the plaintiffs' course would have been precisely the same had the administrator, immediately upon filing the petition for distribution, expressly informed them of the con-



tents thereof. Presumably they would thereupon have taken advice and such advice would have been the same as that later secured and they would have waited seven years instead of five before commencing the present action. In other words, it is patent that they were not injured by their ignorance of the defendants' illegal claim, and for us now to say that in a case of such doubtful rights, they could, after learning the facts remain inactive for a period of almost twice the length of time prescribed by the State statute of limitations, for no other reason than that the advice they took from time to time was unfavorable, would be to entirely set at naught the statute of limitations. It is suggested that the plaintiffs are illiterate, but the fact is immaterial, for they did that which a person of the highest intelligence would have done; they sought advice from persons learned in the law. It is further suggested that greater consideration should be given to their claims because the defendants and the other distributees paid no consideration for what they received, but the consideration which they paid is quite as great as that which the plaintiffs have paid. There is no balance of equitable considerations; at most the plaintiffs have only a superior legal right.

“Statutes of limitation are vital to the welfare of society and are favored in the law. They are found and approved in all systems of enlightened jurisprudence. They promote repose by giving security and stability to human affairs. An important public policy lies at their foundation. They stimulate to activ-

ity and punish negligence. While time is constantly destroying the evidence of rights, they supply its place by a presumption which renders proof unnecessary. Mere delay, extending to the limit prescribed, is itself a conclusive bar." *Wood vs. Carpenter*, 101 U. S. 135. And as was said by Judge Wallace in *Frishmuth vs. Farmers Loan & Trust Co.*, 95 Fed. 5: "While the equity jurisdiction of the courts of the United States is subject to neither limitation nor restraint by State legislation, and is uniform throughout the different States of the union, these courts, like all courts of equity, feel themselves bound, in all cases of concurrent jurisdiction, by the statutes of limitation that govern courts of law in similar circumstances; and whether they act in analogy or in obedience to those statutes is not of practical moment."

"In the application of the doctrine of laches the settled rule is that courts of equity are not bound by, but that they usually act or refuse to act in analogy to, the statute of limitations relating to actions at law of like character. \* \* \* The meaning of this rule is that, under ordinary circumstances, a suit in equity will not be stayed for laches before, and will be stayed after the time fixed by the analogous statute of limitations at law; but if unusual conditions or extraordinary circumstances make it inequitable to allow the prosecution of a suit after a briefer, or to forbid its maintenance after a longer, period than that fixed by the statute, the chancellor will not be bound by the statute, but will determine the extraor-

dinary case in accordance with the equities which condition it. \* \* \* When a suit is brought within the time fixed by the analogous statute the burden is on the defendant to show, either from the face of the bill or by his answer, that extraordinary circumstances exist which require the application of the doctrine of laches; and when such a suit is brought after the statutory time has elapsed the burden is on the complainant to show by suitable averments in his bill that it would be inequitable to apply it to his case." *Kelly vs. Boettcher*, 85 Fed. 55, 62.

"Whenever delay in bringing the suit appears, you must, to properly state your case, anticipate this defense, and reasonably excuse the delay, such as the existence of some disability, or a fraudulent concealment of the facts by the defendant, or it must be shown that in the nature of things the cause of action or fraud perpetrated could not sooner have been discovered. There must be distinct averments when the fraud, mistake, concealment, or misrepresentation was discovered, and what the discovery is, so that the court may clearly see whether, by the exercise of ordinary diligence, the discovery could not have been sooner made." *Simpkins, A Federal Equity Suit*, p. 277. See also *Wood vs. Carpenter*, *supra*.

No case has been drawn to my attention which, by reason of a close similarity of facts, tends to support the plaintiffs' contention, and upon the whole it must be held that they have failed to disclose any such unusual facts or extraordinary circumstances as would warrant this Court in disregarding a fair and rea-

sonable State statute and in thus enabling the plaintiffs to litigate a charge of fraud the facts involved in which they knew more than five years before they took any action. Possibly rights of innocent parties have not grown up, but it may very well be that the defendant, Lawrence F. Connolly, has for some time acted upon the assumption that, after being drawn into court three times touching the probity of his conduct and the propriety of his claim to be one of the heirs of the deceased, he would be exempt from further harrassment. As has already been stated, the plaintiffs allege that they took a deep interest in the other suits, and, if they did not render assistance, it is to be inferred that at least they gave encouragement thereto, and the Court should not be astute to find a way by which they can now be heard in their own right to assert a fraud which their mother, under their encouragement and possibly with their aid, repeatedly but unsuccessfully asserted.

The motion will be sustained and the bill dismissed.

Filed July 11, 1917.

W. D. McReynolds, Clerk.

---

(Title of Court and Cause.)

No. 681.

PLAINTIFFS' MOTION TO AMEND BILL OF  
COMPLAINT.

Comes now the plaintiffs in the above entitled cause, and begs leave to amend their Bill of Complaint, in the following particulars, by striking out



the following words in line eight (8) and nine (9), of paragraph nineteen (19), to-wit:

“that said representations were made by said Lawrence F. Connolly.”

and to insert in the place thereof, the words:

“at the time knowing that they were not the next of kin or his heirs at law, or as such entitled to a distributive share of said estate; that said representations were made by the said Lawrence F. Connolly, while acting as administrator of said estate.”

Said amendment to be made either by re-writing the said Bill of Complain, and the filing and service thereof, or by the filing and service of the amendment herein set forth, in accordance with the order or direction of this Court.

CALEB JONES, Solicitor.

Endorsed, filed July 23, 1917.

W. D. McReynolds, Clerk.

---

*Amend.*

ORDER DENYING MOTION TO ~~DISMISS~~.

At a stated term of the District Court of the United States for the District of Idaho, held at Boise, Idaho, on Monday, the thirtieth day of July, 1917.

Present: Hon. Frank S. Dietrich, Judge.

CELIA DIAMOND, *et al.*,

vs.

LAWRENCE F. CONNOLLY, *et al.*

CIVIL No. 681, N. D.

It was ordered that the plaintiffs' motion to amend the complaint herein, be, and the same is hereby denied. The plaintiffs being allowed exceptions to said order.



(Title of Court and Cause.)

No. 681.

DECREE.

This cause came on to be heard at the spring term, 1917, of the Northern Division, and was argued by counsel upon motion to dismiss; and thereupon, the same having been submitted for decision, and a written opinion having been heretofore filed,

It is accordingly ordered, adjudged, and decreed that the plaintiffs' Bill of Complaint be, and the same is, hereby dismissed absolutely, and that the defendants recover their costs, taxed at \$.....

Plaintiffs are given exceptions.

Dated this thirtieth day of July, 1917.

FRANK S. DIETRICH,  
District Judge.

Filed July 30, 1917.

W. D. McReynolds, Clerk.

---

(Title of Court and Cause.)

No. 681.

PETITION FOR APPEAL.

To the Hon. Frank S. Dietrich, District Judge of the District Court of the United States, District of Idaho:

The above named plaintiffs feeling themselves aggrieved by the decree made and entered in this cause on the thirtieth day of July, A. D. 1917, does hereby appeal from said decree to the Circuit Court of Appeals for the Ninth Circuit, for the reasons specified in the assignment of errors, which is filed herewith, and they pray that their appeal be allowed and that a

Citation be issued as provided by law, and that a transcript of the record, proceedings and papers upon which said decree was based, duly authenticated, may be sent to the United States Circuit Court of Appeals for the Ninth Circuit, sitting at San Francisco, California.

And your petitioners further pray that the proper order touching the security be required of them to perfect their appeal be made.

CALEB JONES,

Solicitor for Plaintiffs.

The petition granted and the appeal allowed upon giving bond conditioned as required by law in the sum of Two Hundred (\$200.00) dollars.

Dated this nineteenth day of November, A. D. 1917.

FRANK S. DIETRICH,

District Judge.

Endorsed, filed November 19, 1917.

W. D. McReynolds, Clerk.

---

(Title of Court and Cause.)

No. 681.

#### ASSIGNMENT OF ERRORS.

And now, on this.....day of November, A. D. 1917, came the plaintiffs herein by their solicitor, Caleb Jones, and says that the decree entered in the above cause on the thirtieth day of July, A. D. 1917, is erroneous and unjust to plaintiffs.

First, because, the Court erred in dismissing plaintiffs' complaint on the ground that it did not state

facts sufficient to constitute a valid cause of action in equity, or entitle plaintiffs to the relief prayed for against each of the several defendants.

Second, the Court erred in denying plaintiffs' motion to amend their complaint, by striking out the words in line eight (8) and nine (9), of paragraph nineteen (XIX), to-wit: "that said representations were made by Lawrence F. Connolly," and inserting in the place thereof the words: "at the time knowing that they were not the next of kin or heirs at law, or as such entitled to a distributive share of said estate; that said representations were made by the said Lawrence F. Connolly, while acting as administrator of said estate."

Third, the Court erred in dismissing plaintiffs' complaint on the ground that the cause of action therein set forth was barred by the provisions of Sections 5627 or 5666, of Subdivision 7, of Section 4831, or of Section 4834, of the Code of Civil Procedure of the Idaho Revised Codes.

Fourth, the Court erred in dismissing plaintiffs' complaint on the ground that the cause of action therein set forth was barred by the provisions of Section 4052, or Subdivision 4, of Section 4054, of the Code of Civil Procedure of the Idaho Revised Codes.

Fifth, that the Court erred in dismissing plaintiffs' complaint on the ground that, plaintiffs are barred from a recovery by reason of their apparent laches.

Sixth, that the Court erred in sustaining defendants' motions to dismiss plaintiffs' complaint.

Seventh, the Court erred in not denying defendants' motion to dismiss plaintiffs' complaint.

Eighth, the Court erred in the making and entry of that certain decree on the thirtieth day of July, A. D. 1917, absolutely dismissing plaintiffs' complaint in this action.

WHEREFORE, plaintiffs pray that said decree be reversed and that the District Court be directed to overrule defendants' said motions; and to grant plaintiffs' motion to amend their complaint; and that the defendants be required to answer and to proceed to the trial of this cause, and for such other and further relief as to the Court may seem meet and proper.

CALEB JONES,

Solicitor for Plaintiffs.

Endorsed, filed November 19, 1917.

W. D. McReynolds, Clerk.

---

(Title of Court and Cause.)

No. 681.

BOND ON APPEAL.

KNOW ALL MEN BY THESE PRESENTS, that we, Celia Diamond and Bridget McGrail, as principals, and American Surety Company of New York, as surety, acknowledge ourselves to be jointly indebted to Lawrence F. Connolly, administrator of the estate of John Corbett, deceased, and Lawrence F. Connolly, individually, John J. Connolly and John E. McBurney, appellees in the above cause, in the sum of Two Hundred (\$200.00) dollars, conditioned that,

WHEREAS, on the thirtieth day of July, A. D. 1917, in the District Court of the United States, District of Idaho, Northern Division, in a suit pending in that Court, wherein Celia Diamond and William Diamond, and Bridget McGrail and John McGrail were plaintiffs, and Lawrence F. Connolly, administrator of the estate of John Corbett, deceased, and Lawrence F. Connolly, individually, John J. Connolly, and John E. McBurney, were defendants, numbered on equity docket as 681, a decree was rendered and entered against the said plaintiffs, and they having obtained an appeal to the United States Circuit Court of Appeals, for the Ninth Circuit, and filed a copy thereof in the office of the clerk of the Court to reverse said decree and a citation directed to the said defendants, citing and admonishing them to be and appear at a session of the United States Circuit Court of Appeals for the Ninth Circuit, to be holden in the city of San Francisco, State of California.

NOW, if the said plaintiffs shall prosecute their appeal to effect and answer all damages and costs, if they fail to make their plea good, then the above obligation to be void, else to remain in full force and virtue.

SEALED and dated this ninth day of November, 1917.

Her  
CELIA X DIAMOND. (Seal.)  
Mark.

Her  
BRIDGET X McGRAIL. (Seal.)  
Mark.



Witnesses:

W. J. Zwinggi,

Owen Rogers.

(Seal of Surety Company.)

AMERICAN SURETY COMPANY

OF NEW YORK,

By Bradley Sheppard,

Resident Vice President,

Boise, Idaho.

Attest: Chas. M. Kahn,

Resident Assistant Secretary.

The within bond on appeal approved this November 19, 1917.

FRANK S. DIETRICH,

District Judge.

Endorsed, filed November 19, 1917.

W. D. McReynolds, Clerk.

---

(Title of Court and Cause.)

No. 681.

PLAINTIFFS' PRAECIPE FOR TRANSCRIPT.

To W. D. McReynolds, clerk of the above entitled Court:

You will please prepare a transcript of the record in this cause, to be filed in the office of the clerk of the United States Circuit Court of Appeals, for the Ninth Circuit, at San Francisco, California, under the appeal heretofore perfected and include in said transcript the following pleadings, proceedings and papers on file, to-wit:

1. Bill of Complaint.
2. Order directing service of Subpoena by T. L. Quarles.
3. Subpoena served on defendants with return of service.
4. Notice of Motion to Quash and Dismiss, by defendants, Lawrence F. Connolly, as administrator and individually, and John J. Connolly, served on plaintiffs May 21, 1917.
5. Motion of defendant, John E. McBurney to Dismiss for want of jurisdiction.
6. Order overruling two above mentioned motions.
7. Motion to Dismiss, by defendants, Lawrence F. Connolly, as administrator and individually, and John J. Connolly.
8. Motion of the defendant, John E. McBurney, to Dismiss.
9. Court's Decision on last two motions to dismiss.
10. Motion of plaintiffs' to Amend Bill of Complaint.
11. Order denying Motion to Amend Bill of Complaint.
12. Final Decree.
13. Petition for Appeal and Order granting it.
14. Assignment of Errors.
15. Bond on Appeal and Approval thereof by Judge.
16. Original Citation with Acceptance of Service thereon.

17. Plaintiffs' Praeipce for Transcript, and Acceptance of Service thereon.

To this transcript you will please attach the usual certificate of full transcript; and also certificate under seal showing the costs of the record and by whom paid.

Such transcript is to be prepared as required by law and the rules of this Court, and the rules of the United States Circuit Court of Appeals, at San Francisco, California, before thirty days from the date of the signing of the Citation.

CALEB JONES,

Solicitor for Plaintiffs.

Service of the foregoing Praeipce, by receipt of copy, admitted this nineteenth day of November, 1917.

C. W. BEALE,

Solicitor for Lawrence F. Connolly, and John J. Connolly, defendants.

EZRA R. WHITLA,

Solicitor for John E. McBurney, defendant.

Endorsed, filed November 19, 1917.

W. D. McReynolds, Clerk.

By Pearl E. Zanger, Deputy.

*In the District Court of the United States, District  
of Idaho, Northern Division.*

CELIA DIAMOND and WILLIAM DIAMOND, and  
BRIDGET McGRAIL and JOHN McGRAIL,  
Plaintiffs,

vs.

LAWRENCE F. CONNOLLY, Administrator of  
the Estate of JOHN CORBETT, Deceased, and  
LAWRENCE F. CONNOLLY, individually,  
JOHN J. CONNOLLY and JOHN E. McBUR-  
NEY,

Defendants.

No. 681 In Equity.

CITATION.

UNITED STATES OF AMERICA to Lawrence F.  
Connolly, administrator of the estate of John Cor-  
bett, deceased, Lawrence F. Connolly, individually,  
John J. Connolly and John E. McBurney, Greet-  
ing:

You and each of you are hereby notified that in a  
certain case in equity in the United States District  
Court in and for the District of Idaho, wherein Celia  
Diamond and William Diamond and Bridget Mc-  
Grail and John McGrail, are plaintiffs, Lawrence F.  
Connolly, administrator of the estate of John Cor-  
bett, deceased, and Lawrence F. Connolly, individ-  
ually, John J. Connolly and John E. McBurney, are  
defendants, an appeal has been allowed the plaintiffs  
therein to the United States Circuit Court of Appeals  
for the Ninth Circuit. You are hereby cited and ad-  
monished to be and appear in said Court at San

Francisco, California, thirty (30) days after the date of this citation, to show cause, if any there be, why the order and decree appealed from should not be corrected and speedy justice done the parties in that behalf.

WITNESS, the Honorable Frank S. Dietrich, Judge of the District Court of the United States, for the District of Idaho, this nineteenth day of November, A. D. 1917.

FRANK S. DIETRICH,

(Seal.)

District Judge.

Attest:

W. D. McReynolds, Clerk.

Service of the foregoing citation, by receipt of copy, admitted this nineteenth day of November, A. D. 1917.

C. W. BEALE,

Solicitor for Lawrence F. Connolly and John J. Connolly, Defendants.

EZRA R. WHITLA,

Solicitor for John E. McBurney, Defendant.

Filed November 19, 1917.

W. D. McReynolds, Clerk.

---

### RETURN TO RECORD.

And thereupon it is ordered by the Court that the foregoing transcript of the record and proceedings in the cause aforesaid, together with all things thereunto relating, be transmitted to the United States Court of Appeals for the Ninth Circuit, and the same is transmitted accordingly.

W. D. McREYNOLDS,

(Seal.)

Clerk.



(Title of Court and Cause.)

No. 681.

CLERK'S CERTIFICATE.

United States of America,

District of Idaho,—ss.

I, W. D. McReynolds, clerk of the District Court of the United States for the District of Idaho, do hereby certify that the above and foregoing transcript of pages numbered from 1 to 86, inclusive, contain true and correct copies of the Bill of Complaint, Order directing service of Subpoena by T. L. Quarles, Subpoena served on defendants with return of service, Notice of Motion to Quash and Dismiss, by defendants, Lawrence F. Connolly, as administrator and individually, and John J. Connolly, Motion of defendant, John E. McBurney to Dismiss for want of jurisdiction, Order overruling two above mentioned motions, Motion to Dismiss, by defendants, Lawrence F. Connolly, as administrator and individually, and John J. Connolly, Motion of the defendant, John E. McBurney, to Dismiss, Court's Decision on last two motions to dismiss, Motion of plaintiffs' to Amend Bill of Complaint, Order denying motion to Amend Bill of Complaint, Final Decree, Petition for Appeal and Order granting it, Assignment of Errors, Bond on Appeal and approval thereof by Judge, Original Citation, Praecipe for Transcript, return to record and clerk's certificate, in the cause aforesaid, which, together, constitute the transcript of record herein upon appeal to the United States Circuit Court of Appeals for the Ninth Circuit. I further

certify that the cost of the record herein amounts to the sum of \$117.85, and that the same has been paid by appellants.

Witness my hand and the seal of said Court this 14th day of December, 1917.

W. D. McREYNOLDS,

(Seal.)

Clerk.